

Item # 27

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Authorize the Release of Irrevocable Letters of Credit and Performance and Payment Agreements for Lake Jesup Woods

DEPARTMENT: Planning & Development **DIVISION:** Development Review

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Cynthia Sweet **EXT.** 7443

Agenda Date 8/22/2006 **Regular** ☐ **Consent** ☒ **Work Session** ☐ **Briefing** ☐
Public Hearing – 1:30 ☐ **Public Hearing – 7:00** ☐

MOTION/RECOMMENDATION:

Authorize the release of Irrevocable Letters of Credit and Performance and Payment Agreements # SM213730W and # SM213731W for Lake Jesup Woods, as requested by Greater Homes, Inc., a Meritage Homes Company, Jesse B. Swords, Land Development Manager, applicant.

District 5 – Carey

Cynthia Sweet, Senior Planner

BACKGROUND:

The subdivision is located on the south side of Myrtle Street, east of Hester Avenue, in Section 23, Township 20 South, Range 30 East.

The following Performance Bonds were required as part of the Land Development Code Section 35.44 (e) (1) to secure the construction and completion of the subdivision improvements for Lake Jesup Woods:

- Performance Bond # SM213730W (Water and Sewer) for \$211,259.00 (Wachovia Bank, N.A.)
- Performance Bond # SM213731W (Roads) for \$871,427.00 (Wachovia Bank, N.A.)

The Performance Bonds were replaced with Maintenance Bonds to insure the maintenance of the subdivision improvements. Staff has conducted the final construction inspection and found that all construction requirements were completed per the approved final engineering plan.

STAFF RECOMMENDATION:

Staff recommends the Board authorize the release of Performance Bonds # SM213730W and SM213731W for subdivision improvements for Lake Jesup Woods, as requested by the applicant.

District 5 – Carey

| | |
|--------------|--------|
| Reviewed by: | KFS |
| Co Atty: | |
| DFS: | |
| Other: | |
| DCM: | |
| CM: | |
| File No. | cpdd02 |

Attachments: Copies of Performance Bonds

Performance Bond # SM213730W – (Water and Sewer) – Exhibit A

Performance Bond # SM213731W – (Roads) – Exhibit B

AGREEMENT
(Performance and Payment – Water and Sewer)

THIS AGREEMENT is made and entered into this 16th Day of May, 2005, between The Greater Construction Corp., hereinafter referred to as "DEVELOPER", Developer of Lake Jesup Woods, and Seminole County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

WITNESSETH:

1. The DEVELOPER hereby delivers to the COUNTY, an irrevocable letter of credit No. SM213730W of Wachovia Bank, N.A. in the Sum of \$211,259.00 to guarantee that all improvements set forth on the approved plans and specifications for the above development will be fully completed and paid for.
2. That COUNTY agrees to accept the letter of credit and to return or draw on same in the following manner:
 - a. To return to Wachovia Bank, N.A. upon request by DEVELOPER and upon proof satisfactory to the COUNTY that work has been completed in accordance with all applicable requirements, said proff to include a certificate to that effect signed by the DEVELOPER, the DEVELOPER'S Engineer, and the County Engineer and, upon proof satisfactory to the COUNTY that all bills therefore have been paid, including, but not limited to, bills for surveying, engineering and land clearing, and work and material used in the construction of roads and other required improvements which are included in the plans and specifications.
 - b. To draw upon the Letter of Credit in accordance with its terms upon a determination that any portion of all of the improvements have not been completed in accordance with the approved plans and specifications within 365 calendar days from the date of this agreement. Provided, however, that if the work is not completed within 365 days and the DEVELOPER has made substantial progress towards completion of the required improvements, is prosecuting completion of the work and the public interest is served thereby, the COUNTY may extend the time for performance hereunder to a time no later than thirty (30) days prior to the expiration date of the Letter of Credit. The COUNTY is hereby authorized, but not obligated to take over and perform or cause to be performed any such uncompleted work and to use for such purposes the funds available under said Letter of Credit to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequential, which may be sustained on account of DEVELOPER'S failure to perform this Agreement.

- c. Further, the COUNTY is authorized to draw on the Letter of Credit to pay any bills for said improvements upon proof satisfactory to the COUNTY that such claims are just and unpaid and the DEVELOPER hereby consents to any such payments and authorizes and ratifies any such action on the part of the COUNTY and agrees to protect and save harmless the COUNTY from any claims of any persons whomsoever on account of any improvements which have not been completed or paid for or which have been completed or paid for by the COUNTY.

THIS AGREEMENT, signed and sealed the 16th Day of May, 2005.

ATTEST:

Witness:

Mary Duggan
(Signature)

Greg Duggan
(Printed Name)

Jason Kamen
(Signature)

Jason Kamen
(Printed Name)

Hampton F. Conley
(Signature)

Hampton F. Conley
Executive Vice President

Witness:

Mary Duggan
(Signature)

Greg Duggan
(Printed Name)

Jason Kamen
(Signature)

Jason Kamen
(Printed Name)

Simon D. Snyder
(Signature)

Simon D. Snyder
Secretary

WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SM213730W

| LETTER OF CREDIT AMOUNT | ISSUE DATE | EXPIRY DATE |
|-------------------------|------------|-------------|
| USD 211,259.00 | 05/13/05 | 07/01/06 |

BENEFICIARY:
SEMINOLE COUNTY BOARD OF COUNTY
COMMISSIONERS
1101 EAST FIRST STREET
STANFORD, FL 32771

APPLICANT:
THE GREATER CONSTRUCTION CORPORATION
1105 KENSINGTON PARK DRIVE
ALTAMONTE SPRINGS, FL 32714

GENTLEMEN:

BY ORDER OF THE GREATER CONSTRUCTION CORPORATION, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON WACHOVIA BANK, NATIONAL ASSOCIATION UP TO AN AGGREGATE AMOUNT OF \$211,259.00 AVAILABLE BY PAYMENT WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A DRAFT AT SIGHT DRAWN ON WACHOVIA BANK, NATIONAL ASSOCIATION, DULY ENDORSED ON ITS REVERSE SIDE THEREOF BY THE BENEFICIARY, STATING, "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. SM213730W OF WACHOVIA BANK, NATIONAL ASSOCIATION DATED MAY 13, 2005."

2. THE ORIGINAL LETTER OF CREDIT PLUS ANY AND ALL AMENDMENTS ATTACHED THERETO.

3. A DATED STATEMENT ISSUED ON THE LETTERHEAD OF THE BENEFICIARY AND PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE STATING THAT: THAT CERTAIN PERFORMANCE AND PAYMENT AGREEMENT DATED MAY 14TH, 2005 BETWEEN THE GREATER CONSTRUCTION CORPORATION, AND SEMINOLE COUNTY IS IN DEFAULT.

THE BANK AGREES THAT THIS LETTER OF CREDIT SHALL AUTOMATICALLY EXTEND ITSELF FOR SUCCESSIVE ONE-YEAR PERIODS UNLESS WE SEND THE BENEFICIARY WRITTEN NOTICE NO LATER THAN AT LEAST FORTY-FIVE (45) DAYS PRECEDING EXPIRATION DATE THAT IT CHOOSES NOT TO EXTEND THE LETTER OF CREDIT, IN WHICH CASE, THE COUNTY SHALL BE ENTITLED TO DEMAND AND RECEIVE THE OUTSTANDING AMOUNT OF MONEY REPRESENTED BY THIS LETTER OF CREDIT. IN THE EVENT A DRAW BASED ON EXPIRATION OF THIS LETTER OF CREDIT THE PROCEEDS SHALL BE HELD BY SEMINOLE COUNTY AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THAT CERTAIN PERFORMANCE AND PAYMENT AGREEMENT WITH THE GREATER CONSTRUCTION CORPORATION.

UPON TENDER OF FULL PAYMENT, YOU WILL RELEASE TO THE BANK THE ORIGINAL IRREVOCABLE LETTER OF CREDIT MARKED "CANCELLED". IN ANY EVENT, UPON EXPIRATION OR AT ANY TIME AFTER THE COMPLETION OF THAT CERTAIN PERFORMANCE AND PAYMENT AGREEMENT DATED MAY 14TH, 2005 TO THE SATISFACTION OF THE BOARD OF COUNTY COMMISSIONERS EVIDENCED BY A WRITTEN ACCEPTANCE OF THE REQUIRED IMPROVEMENTS COVERED BY THAT CERTAIN PERFORMANCE AND PAYMENT AGREEMENT, YOU WILL RETURN THE ORIGINAL LETTER OF CREDIT TO THIS BANK MARKED "CANCELLED".

CONTINUED ON NEXT PAGE WHICH FORMS AN INTEGRAL PART OF THIS
LETTER OF CREDIT

BK325PG1255

WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SM213730W PAGE NO. 2 05/13/05

WE HEREBY ENGAGE WITH BENEFICIARY OF ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

IF THE BOARD OF COUNTY COMMISSIONERS INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR SEMINOLE COUNTY'S COURT COSTS AND REASONABLE ATTORNEY'S FEES, BUT THE WACHOVIA BANK, NATIONAL ASSOCIATION SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEY'S FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

DOCUMENTS MAY BE PRESENTED AT EITHER OF OUR FOLLOWING LOCATIONS:

STANDBY L/C DEPT
401 LINDEN STREET
WINSTON-SALEM, NC 27101

OR


INTERNATIONAL DIVISION
200 S. BISCAYNE BOULEVARD
MIAMI, FL 33131

SHOULD THE BENEFICIARY CHOOSE TO PRESENT AT THE MIAMI ADDRESS THEY MUST ALSO FAX THE DRAWING DOCUMENTS TO 336-735-0950 THE SAME DAY.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT, IN ANY WAY, BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THAT CERTAIN PERFORMANCE AND PAYMENT AGREEMENT DATED MAY 14TH, 2005 AND REFERENCED HEREIN.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98").

SINCERELY,



AUTHORIZED SIGNATURE

OR

PLEASE DIRECT ANY CORRESPONDENCE OR INQUIRY QUOTING OUR REFERENCE NUMBER TO:

WACHOVIA BANK, NATIONAL ASSOCIATION
401 LINDEN STREET
WINSTON-SALEM, NORTH CAROLINA 27101

OUR CUSTOMER CARE PHONE NUMBER FOR ANY QUERIES IS 800-776-3862
OUR FAX NUMBER IS 336-735-0950

BK 325PG1256

AGREEMENT
(Performance and Payment – Roads)

THIS AGREEMENT is made and entered into this 16th Day of May, 2005, between The Greater Construction Corp., hereinafter referred to as "DEVELOPER", Developer of Lake Jesup Woods, and Seminole County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY".

WITNESSETH:

1. The DEVELOPER hereby delivers to the COUNTY, an irrevocable letter of credit No. SM213731W of Wachovia Bank, N.A. in the Sum of \$871,427.00 to guarantee that all improvements set forth on the approved plans and specifications for the above development will be fully completed and paid for.
2. That COUNTY agrees to accept the letter of credit and to return or draw on same in the following manner:
 - a. To return to Wachovia Bank, N.A. upon request by DEVELOPER and upon proof satisfactory to the COUNTY that work has been completed in accordance with all applicable requirements, said proof to include a certificate to that effect signed by the DEVELOPER, the DEVELOPER'S Engineer, and the County Engineer and, upon proof satisfactory to the COUNTY that all bills therefore have been paid, including, but not limited to, bills for surveying, engineering and land clearing, and work and material used in the construction of roads and other required improvements which are included in the plans and specifications.
 - b. To draw upon the Letter of Credit in accordance with its terms upon a determination that any portion of all of the improvements have not been completed in accordance with the approved plans and specifications within 365 calendar days from the date of this agreement. Provided, however, that if the work is not completed within 365 days and the DEVELOPER has made substantial progress towards completion of the required improvements, is prosecuting completion of the work and the public interest is served thereby, the COUNTY may extend the time for performance hereunder to a time no later than thirty (30) days prior to the expiration date of the Letter of Credit. The COUNTY is hereby authorized, but not obligated to take over and perform or cause to be performed any such uncompleted work and to use for such purposes the funds available under said Letter of Credit to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequential, which may be sustained on account of DEVELOPER'S failure to perform this Agreement.

- c. Further, the COUNTY is authorized to draw on the Letter of Credit to pay any bills for said improvements upon proof satisfactory to the COUNTY that such claims are just and unpaid and the DEVELOPER hereby consents to any such payments and authorizes and ratifies any such action on the part of the COUNTY and agrees to protect and save harmless the COUNTY from any claims of any persons whomsoever on account of any improvements which have not been completed or paid for or which have been completed or paid for by the COUNTY.

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ATTEST:

Witness:

May Duggan
(Signature)

Greg Duggan
(Printed Name)

Jason Kamen
(Signature)

JASON KAMEN
(Printed Name)

Hampton P. Conley
(Signature)

Hampton P. Conley
Executive Vice President

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Greg Duggan
(Printed Name)

Jason Kamen
(Signature)

JASON KAMEN
(Printed Name)

Simon D. Snyder
(Signature)

Simon D. Snyder
Secretary

WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER SM213731W

| LETTER OF CREDIT AMOUNT | ISSUE DATE | EXPIRY DATE |
|-------------------------|------------|-------------|
| USD 871,427.00 | 05/13/05 | 07/01/06 |

BENEFICIARY:
SEMINOLE COUNTY BOARD OF COUNTY
COMMISSIONERS
1101 EAST FIRST STREET
SANFORD, FL 32771

APPLICANT:
THE GREATER CONSTRUCTION CORPORATION
1105 KENSINGTON PARK DRIVE
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GENTLEMEN:

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BK 324PG 1072

WACHOVIA

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SM213731W

PAGE NO. 2 05/13/05

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OR

INTERNATIONAL DIVISION
200 S. BISCAYNE BOULEVARD
MIAMI, FL 33131

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SINCERELY,



AUTHORIZED SIGNATURE
JR

PLEASE DIRECT ANY CORRESPONDENCE OR INQUIRY QUOTING OUR REFERENCE NUMBER TO:

WACHOVIA BANK, NATIONAL ASSOCIATION
401 LINDEN STREET
WINSTON-SALEM, NORTH CAROLINA 27101

OUR CUSTOMER CARE PHONE NUMBER FOR ANY QUERIES IS 800-776-3862
OUR FAX NUMBER IS 336-735-0950

BK 324 PG 1073